

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
2004 JUL 29 P 12:53

U.S. DISTRICT COURT
DISTRICT OF MASS.

NATIONAL RAILROAD PASSENGER
CORPORATION,

Plaintiff,

v.

5,103 SQUARE FEET OF LAND,
LOCATED AT 40-46 HARVARD
STREET, SITUATED IN WESTWOOD,
MASSACHUSETTS; MORTIMER B.
ZUCKERMAN AND EDWARD H. LINDE,
TRUSTEES OF THE 40-46 HARVARD
STREET TRUST, OWNERS; AND
UNKNOWN OTHERS,

Defendants.

03 Civ.-12440-DPW

NATIONAL RAILROAD PASSENGER CORPORATION'S
ASSENTED-TO MOTION FOR IMMEDIATE POSSESSION

Pursuant to Fed. R. Civ. P. 71A, Plaintiff National Railroad Passenger Corporation ("Amtrak"), hereby moves this Court to issue an order granting Amtrak immediate possession of the property described in the Declaration of Taking in the above-captioned matter. As grounds for this Motion, Amtrak states as follows:

1. Pursuant to its eminent domain authority under Section 305(d) of the National Railroad Passenger Service Act, codified in 49 U.S.C. § 24311(a), Amtrak on December 3, 2003 took by eminent domain certain property owned by Defendants located immediately adjacent to the railroad right of way in Westwood, Massachusetts, as more particularly described in

Amtrak's Declaration of Taking, attached hereto as Exhibit A (hereinafter, the "Subject Property").

2. The purpose of the taking was to improve the efficiency and safety of intercity rail passenger service between Boston, Massachusetts and Providence, Rhode Island.

3. On December 3, 2003 Amtrak filed with the Court: (1) Complaint in Condemnation; (2) Declaration of Taking; (3) Notice of Condemnation; and (4) Motion to Make Deposit of Funds In Court; and (5) a check payable to the District Court, representing the estimated just compensation for the Subject Property.

4. Pursuant to 49 U.S.C. § 24311, upon filing of the Complaint in Condemnation and the deposit of funds in Court, "title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration." Because Amtrak has fulfilled the filing requirements of 49 U.S.C. § 24311, the specified railroad easement in the Subject Property has now vested in Amtrak.

5. Granting Amtrak immediate possession of the Subject Property is lawful and appropriate and will allow Amtrak to commence the construction necessary to improve the efficiency and safety of rail passenger service in the Northeast Corridor.

6. Defendants have assented to this motion.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Court allow its Motion for Immediate Possession, and enter an order (a form of which is attached hereto as Exhibit B) allowing Amtrak to take immediate possession of the Subject Property.

Respectfully submitted,

NATIONAL RAILROAD PASSENGER
CORPORATION

By its Attorneys,



Eric W. Wodlinger (BBO #531960)

Johanna W. Schneider (BBO #643744)

Exchange Place

53 State Street

Boston, MA 02109

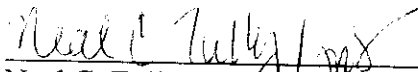
(617) 248-5000

Assented to:

MORTIMER B. ZUCKERMAN AND
EDWARD H. LINDE, TRUSTEES OF THE
40-46 HARVARD STREET TRUST,

By their Attorneys,

MASTERMAN, CULBERT & TULLY, LLP



Neal C. Tully (BBO #504280)

One Lewis Wharf

Boston, MA 02110

(617) 227-8010

Date: July 28, 2004